IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 193 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

DEVERSONS PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 193 of 1989
MRS MAUNA BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 03/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in

respect of assessment year 1984-85 :-

"Whether, the Tribunal was right in law and on facts in deleting the addition of Rs.1,89,229 on account of "Export Cash Assistance" treating the same as a capital receipt ?"

2. Heard Mrs Mauna Bhatt, learned standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

3. The learned counsel for the revenue has invited out attention to the provisions of Section 28(iiib) of the Income-tax Act,1961 and submitted that in view of the aforesaid clause inserted by the Finance Act, 1990 with retrospective effect from 1.4.1967, the amount of export cash assistance received by the assessee was a revenue receipt and, therefore, liable to be taxed.

4. Clause (iiib) of Section 28 inserted with retrospective effect from 1.4.1967 reads as under :-

"28. The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession" -

(iiib) cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India."

In view of the aforesaid legislative amendment with retrospective effect, there can be no scope for any controversy and it has to be held that the export cash assistance received by the assessee was a revenue receipt.

5. In view of the above discussion, our answer to the question is in the negative i.e. in favour of the revenue and against the assessee.

6. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)
sundar/-